

26 Apr 19

From: Commander Bryce A. Benson, U.S. Navy
To: Secretary of the Navy

Subj: REBUTTAL TO SECRETARIAL LETTER OF CENSURE

Ref: (a) Your ltr of 9 Apr 19
(b) RDML Fort ltr 5830 to Office of the Judge Advocate General (Code 11) of 28 Jul 17
(c) International Regulations for Preventing Collisions at Sea (COLREGS)
(d) COMNAVSURFOR 3530.4E, Surface Ship Navigation Department Organization and Regulations Manual (31 Oct 16)
(e) OPNAVINST 3500.39D, Operational Risk Management (29 Mar 18)
(f) COMNAVSURFOR 3530.4E, Surface Force Readiness Manual (9 Mar 12)

Encl: (1) USS FITZGERALD Crew and Navigation Certifications
(2) ATGWP and DESRON 15 Training Records
(3) Navy IG Japan Area Visit Report, March 2017

1. I write respectfully to rebut matters contained in reference (a), which incorrectly describes my conduct and decisions during my thirty-five days in command of USS FITZGERALD (DDG 62) and my actions in advance of our tragic collision with ACX CRYSTAL on 17 June 2017.

2. FITZGERALD was my second opportunity to command at sea in U.S. SEVENTH Fleet. I sought that level of responsibility, understanding and accepting the historical burden of command at sea, without question or challenge. As the Commanding Officer, I am rightly held to account for every action aboard my ship that night, from the performance of my watchstanders to my crew's heroic efforts to save a sinking ship while I was incapacitated by injury. I reflect on the tragedy, mourn for the lives of my Sailors, and pray for the grieving family members and my crew every day. Yet the conclusions in reference (a)—that my leadership was ineffective, my judgment poor, and my responsibility for my Sailors' deaths unequivocal—derive from factual errors and allegations unsupported by evidence. They deserve a considered response, both for my record and for the Navy's effort to become a true learning organization.

3. **Factual Errors.** Paragraph 2 of reference (a) criticizes my decision to retire to my cabin during our transit on 16 June 2017. The critique is based on three factual misstatements.

- a My qualified watchstanders had proven navigation proficiency. I did not leave "an inexperienced watch team, lacking in confidence and technical experience."

Early in the report of his investigation, Rear Admiral Fort notes, "All FTZ watchstanders on the Bridge and in the Combat Information Center (CIC) were qualified for their assignments on the 2200-0200 watch." (Ref. (b) at 11-12.) As I explain below in response to the allegation that the watchbill was not "adequate," this was by design: my Senior Watch Officer, Executive Officer, and I revised multiple iterations of that Condition III Underway Watchbill.

Beyond their qualifications, I was confident that I had assigned a mix of officers and enlisted Sailors who would follow my standing orders and adhere to reference (c), the navigational Rules

of the Road, for that watch's primary evolution: transiting from Sagami-Wan toward the South China Sea. Events of 16 June only enhanced my confidence. I had supervised all aspects of our operations in accordance with reference (d), focusing resources and skill on mission areas in which we were not yet certified: Mobility Aviation (MOB-A) and Mobility Seamanship (MOB-S), including small-boat operations. After overseeing and controlling FITZGERALD through these challenging at-sea evolutions, safeguarding life and material readiness, I then had sufficient opportunity to observe *this same team* who would be on watch from 2200-0200.

With mindful consideration of our next day's certification events and subsequent mission requirements, I retired to my cabin for further preparation and communications concerning those matters. The team to whom I delegated my responsibility for safe navigation included:

- Officer of the Deck (OOD) – A second-tour Division Officer (O2), Surface Warfare Officer, previously qualified as OOD by *three* other SEVENTH Fleet commanding officers. I had directly observed her in advanced warfighting and leadership positions; her performance was stellar. Earlier that week, I had approved her request to apply for continued service as Department Head Afloat. Less than an hour before the collision, she woke me with a standard contact report, which was professional and within sound navigational practices. I detected no angst, concern, or hesitation in her ability to manage the watch team or safely navigate. This was just as I had expected: during our eight days underway while I was in command, she had twice manned the 0200-0700 watch as OOD and had performed superbly as Anti-Submarine Warfare Officer in a real-world operation lasting two days.¹
- Junior Officer of the Deck (JOOD) – A third-tour Division Officer (O3) and Surface Warfare Officer who had spent over four years in the Forward Deployed Naval Force (FDNF) in Japan. After advocating for her transfer to FITZGERALD and assigning her to a position where I could mentor her as a naval officer and surface warfare officer, I had personally observed her in numerous hours of simulator training at Afloat Training Group Western Pacific (ATGWP). Onboard FITZGERALD, she had qualified as an Engineering Officer of the Watch, an advanced watch station for a division officer. I had absolute confidence that her maturity would add value to this watch section as JOOD and that she would call me in accordance with my standing orders if there was any instance of procedural noncompliance.
- Quartermaster of the Watch – My Assistant Navigator (E6), an enlisted surface warfare specialist who was certified by ATGWP in understanding reference (c) during our Mobility Navigation (MOB-N) certification and was, significantly, the senior quartermaster onboard FITZGERALD.² A Quartermaster First Class at the time of the collision, he is now a Chief Petty Officer.

¹ The full scope of the OOD's performance quality is absent from reference (b), which contains no Deck Logs from 1-6 June 2017—five of our eight days underway while I was in command.

² As RDML Fort's investigation revealed, due to highest-echelon manning decisions and despite Surface Force regulations and frequent requests for redress, FITZGERALD had been without a proper senior quartermaster *for more than two years*. When I arrived as Executive Officer, our senior quartermaster was a reservist QM1 who was not a qualified quartermaster of the watch, was not an enlisted warfare specialist, and had never completed an operational deployment.

- Boatswain's Mate of the Watch (BMOW) – A Boatswain's Mate First Class (E6) and enlisted surface warfare specialist who was the paragon of a training supervisor. After assuming command, I continuously conducted ad hoc tests of his junior Sailors, including lookout and navigational proficiency assessments. Invariably, his people were squared away and knowledgeable. Likewise, I was always impressed with his knowledge and understanding of fundamental aspects of operating a destroyer at sea.
- Tactical Action Officer (TAO) – A Department Head (O3), seasoned SEVENTH Fleet Surface Warfare Officer, and my Operations Officer. Her record was flawless, having achieved advanced qualifications during her division officer tours while assigned to USS MCCAMBELL (DDG 85). Her former commanding officer there advised me that she was the most professional and competent officer who served under his command. The daughter of a retired Admiral, she was also the officer who proudly told me, as we completed our MOB-A certification exercise after sunset on 16 June 2017, "Captain, we scored 100% and are certified for unrestricted helicopter operations." For peacetime steaming at Condition III, my Ops was the officer I wanted on TAO watch supervising our fully-manned CIC.
- Surface Warfare Coordinator (SUWC) – A Limited Duty Officer (O3), former Chief Petty Officer, and qualified Surface Warfare Officer who had twenty-two years of service and epitomized my expectations for procedural compliance. His daily scope of duty involved Top Secret/Compartmentalized information supporting programs to which I, as Commanding Officer, did not have access. In direct observation of his performance during my tour on FITZGERALD, I never had reason to doubt his adherence to proper procedure or forceful backup.
- CIC Watch Officer (CICWO) – A Division Officer (O2), Surface Warfare Officer (O2), son of a senior chief petty officer, and graduate of the U.S. Merchant Marine Academy who had been accepted into the Naval Nuclear Propulsion Program. I had directly observed his tireless work to improve FITZGERALD's readiness. He had demonstrated not only his knowledge of the requirements of my standing orders through multiple qualification boards, but also his adherence to concepts of procedural compliance, forceful backup, and questioning attitude.
- CIC Watch Supervisor (CICWS) – An Operations Specialist First Class (E6), enlisted surface warfare specialist who was re-qualified to stand the watch in February 2017 and who had stood watch in CIC for FITZGERALD's entire operational tasking since then. Qualified as a special detail Piloting Officer, he was intimately familiar with the AN/SPS 67's radar performance, my standing orders, and the rules in reference (c). He was selected for Chief Petty Officer on the FY18 board.

My trust in these watchstanders was warranted. Each had been qualified by *at least one* previous commanding officer. In January 2017, Destroyer Squadron FIFTEEN (DESRON 15) certified our crew, after assessing our watchbills and watchstanders' level of knowledge; our navigation equipment certification followed shortly thereafter. (Encl. (1) at 1-5.) In February, ATGWP completed its certification of FITZGERALD in the MOB-N mission area. (*Id.* at 6-32.) I too had assessed, based on direct observation and FITZGERALD's successful operational schedule in 2017, that each of these watchstanders was capable of safely and effectively manning their watches in accordance with applicable Navy orders and my standing orders.

Thus, these watch team members had demonstrated their competence—including confidence and technical understanding—in front of properly-constructed qualification boards, to my predecessors, in official external navigation assessments, and under my command. Not one of these Sailors, their supervisors, or their peers had expressed to me a concern about their qualifications, competency, or confidence. Contrary to reference (a), this was among the most-experienced and capable watch teams anyone could find in DESRON 15 in 2017.

- b. I properly delegated my authority, but was never “disengaged and removed . . . from the tactical control and supervision of [my] ship, while operating at night, in close proximity to land, and in an area with a high volume of maritime traffic.”

The assertion that I “disengaged and removed” myself is a misstatement in two regards. First, conceptually, it distorts the nature of command authority and control. No ship commander can maintain *direct* tactical control of all evolutions at all times. On 16 June, I was on the bridge for over twelve hours, completely engaged in consecutive high-risk evolutions requiring complex coordination to safely and efficiently navigate in restricted waters, launch and recover helicopters, and operate and recover small boats. But, consistent with the risk management principles set forth in reference (e), commanders *must* delegate responsibility to qualified and trusted subordinates who understand and demonstrate proficiency in tasks, rules, and procedures.

Accordingly, after we safely completed small boat operations, I assessed the surface navigation picture, environmental impacts upon a surface transit, and my watchstanders’ fitness. These observations informed my risk-evaluated judgment that my watch team could safely navigate a straight-line transit in unrestricted waters, the benefits of which—ensuring sufficient time to safely conduct long-deferred Mobility Engineering (MOB-E) certification exercises, and avoiding any delay of our assigned National tasking—far outweighed the risks. I departed the bridge after 2300 confident that my team would adhere to basic principles of safe navigation, including my directive to call me. Having properly applied risk-management analysis, I was neither “disengaged” nor “removed.”

Second, reference (a) misstates our navigational circumstances, except insofar as we were “operating at night.” Unlike the evolutions earlier on 16 June, we were not transiting “in close proximity to land.” Generally, reference (d) classifies watchstanding requirements according to whether a ship is in restricted, piloting, or “open ocean / coastal” waters, the latter being any distance beyond ten nautical miles. Using this well-known measure, I deliberately approved a navigation track that *kept us from* piloting and restricted waters.³

Multiple factors supported this decision. Primarily, I wanted to avoid the fishing and small commercial working vessels that are less apt to follow the rules in reference (c). Those vessels are more common near land.⁴ I also wanted to maximize sea space, to allow sufficient

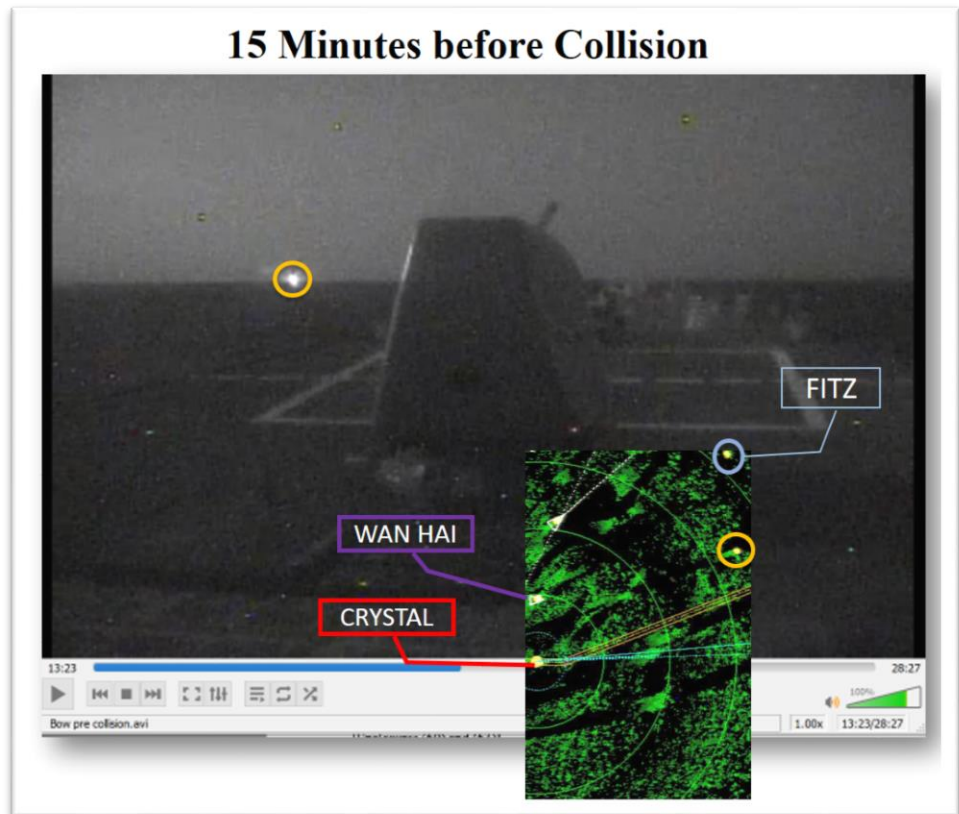
³ Even in his criticism of the track, RDML Fort had to concede that it “maximized distance from land.” (Ref. (b) at 90.)

⁴ The May 2017 collision off the coast of South Korea involving USS LAKE CHAMPLAIN (CG 57) was an example of increased risks of navigating near fishing traffic. I had also conducted an after-action analysis of factors contributing to a FITZGERALD “near-miss,” also in May 2017, before I assumed command, and determined that, although my watchstanders’ actions were

maneuverability. Finally, given our manning limitations and pace of operations, keeping distance from land during this transit avoided obligating another modified navigation detail, which could have exhausted the crew beyond safe operating conditions for the next day's operations.

Nor were we transiting “an area with a high volume of maritime traffic.” Such terminology itself is inapt—professional mariners better understand contact “density” that presents a “risk of collision.” When evaluating density, one must adjust speed or course to counter that risk. Using any terminology, prior to the collision at 0130, traffic/density was manageable.⁵ In fact, between 0110 and 0125 on the morning of 17 June 2017, we passed only one ship with a closest point of approach under three nautical miles. Our bow video shows this relatively quiet contact picture as we approached the Mikomoto Shima Voluntary Traffic Separation Scheme (VTSS).⁶

At 0115, fifteen minutes before the collision, that single passing ship is visible, over 5000 yards to port, bearing left and presenting no risk of collision. This same picture is present in the concurrent view from CRYSTAL's recorded radar, which showed the WAN HAI 266 and ACX CRYSTAL were 13,000 yards and 17,000 yards away from us, respectively. Each ship presented a crossing situation that involved the risk of collision. For each of these three ships, the obligations under reference



commensurate with their training to avoid a collision at sea, proximity to fishing traffic was a primary factor.

⁵ RDML Fort never even described the traffic more than “moderately dense” at various times in the transit. (Ref. (b) at 12, 87, 88.)

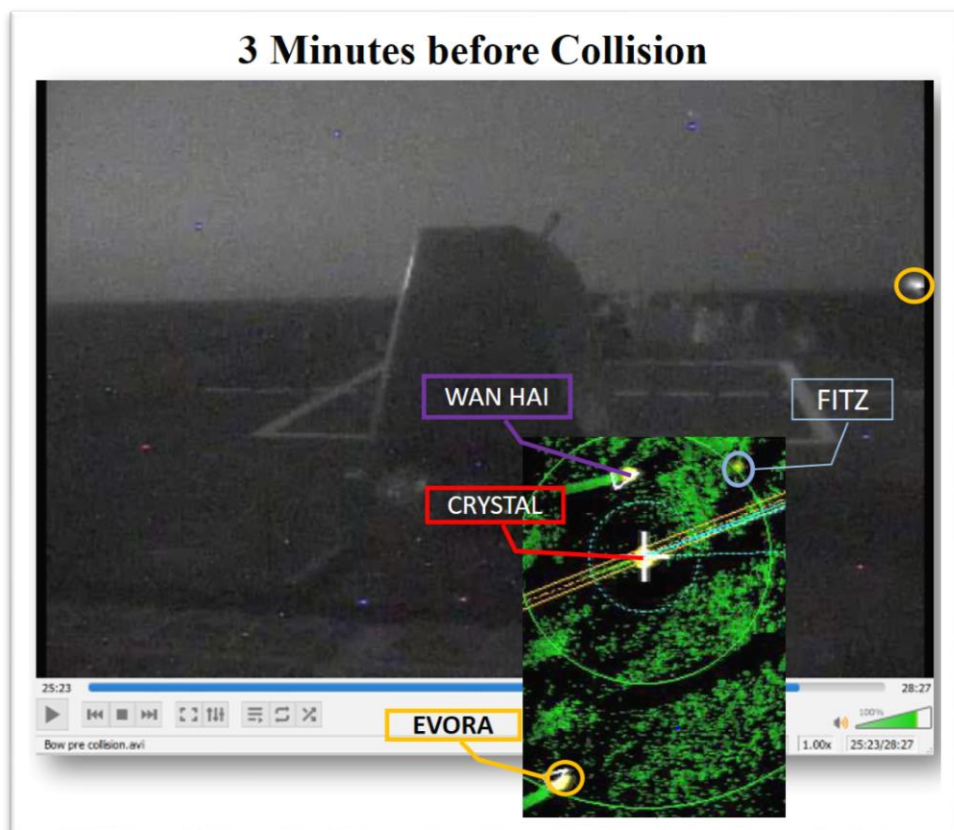
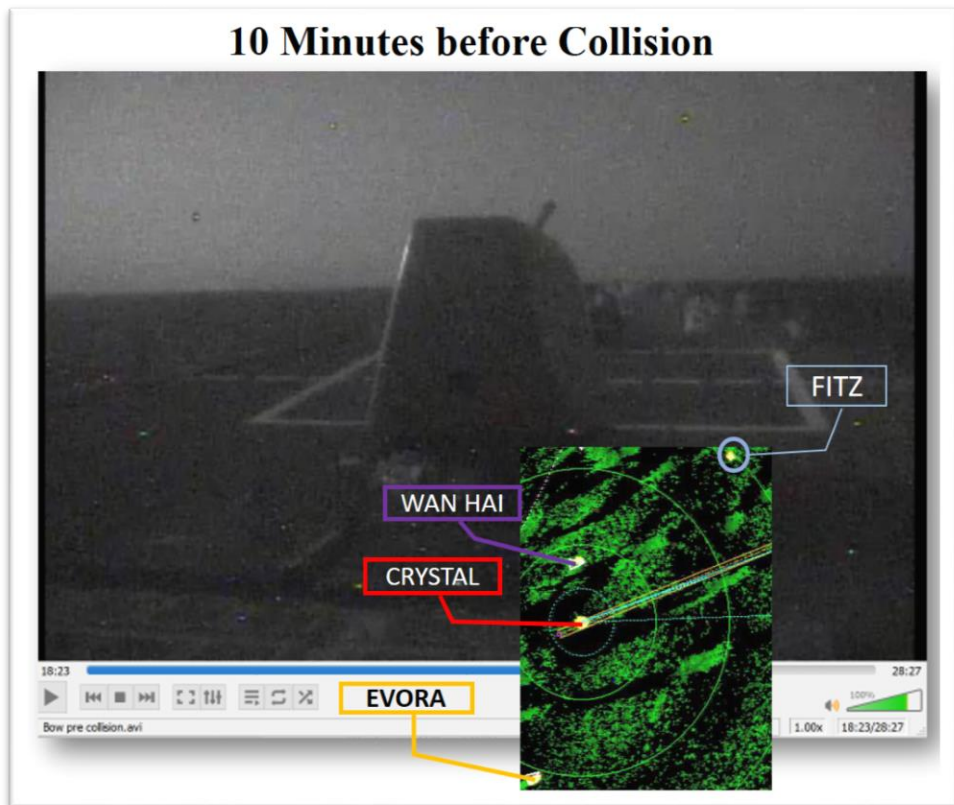
⁶ Enclosure (83) of reference (b) contained videos from the aft VLS camera before the collision, and the bow camera after the collision. But the discovery provided to my defense team did *not* contain the bow camera video containing the approximately thirty minutes *before* the collision. Instead, we received that video from the Naval Surface Warfare Center in Dahlgren, Virginia. My defense team has reason to believe RDML Fort’s investigators *never saw* this crucial video.

(c) were clear: FITZGERALD was required to give-way and the other vessels were to maintain their course and speed. However challenging one may consider this crossing situation, my watchstanders had the tools to avoid a collision.

Five minutes later at 0120, ten minutes before the collision, the contact picture from the bow camera is empty, as it would be for another five minutes. At this time on the radar, WAN HEI was a little more than 8,000 yards away, and CRYSTAL 12,000, ***but having just made an 18-degree port turn toward us.*** MAERSK EVORA was also on the radar, approximately 20,000 yards away from us, and also presenting a crossing situation that involved the risk of collision.

Seven minutes later at 0127, three minutes before the collision, EVORA, more than six miles in the distance, is visible on the bow camera. WAN HEI was by then obviously passing astern of us, its visible sidelights shifting from red to green. CRYSTAL, two nautical miles away, was the only ship presenting a risk of collision. We were clearly visible to each other.

The risk of collision did *not* result from “a high volume of maritime traffic.” Instead, the risk arose from a basic crossing situation accounted for



expressly by Rule 15 of reference (c).⁷

- c. The assertion that I “fail[ed] to implement any mitigation measures, such as ordering the Executive Officer or Navigator to supervise the team on the bridge,” mistakes seniority as a safety mitigation measure and ignores the multiple safety mitigation measures I ordered.

As provided in reference (e), a fundamental precept of Navy operational risk management (ORM) is that it describes a process, not an outcome. On FITZGERALD, we adhered to ORM principles scrupulously, and briefed safety risks for every evolution on 16 June.⁸ As evidenced by my Night Orders comments,⁹ safety was a central concern in all of our operations:

COMMANDING OFFICER'S COMMENTS (IVCS 1003):
Well done managing multiple events today.
Remain focused on safely operating our
ship. Continue to push ahead on qualifications,
there are many departing in the coming months.
Ensure you are watching and getting our midshipmen
guest involved—they are our people and we protect
our people.
SUPPLEMENTAL GUIDANCE: (1) Split plant / 20Kts until we
get 4hrs ahead of PIM.

My comments also reveal the multiple layers of risk analysis present on 16 June. We not only had to navigate safely *toward* our mission area; we had to operate safely and effectively *in* that mission. We left Yokosuka that day without MOB-A and MOB-E certifications. Safely conducting our exercises to obtain those certifications was as important as navigating safely.

⁷ “When two power-driven vessels are crossing so as to involve risk of collision, the vessel which has the other on her own starboard side shall keep out of the way and shall, if the circumstances of the case admit, avoid crossing ahead of the other vessel.”

Of course, the Rules do not apply exclusively to the give-way vessel. See, e.g., Rule 17(a)(i), requiring stand-on vessels to maintain course and speed; and Rule 17(b), directing that when any stand-on vessel “finds herself so close that collision cannot be avoided by the action of the give-way vessel alone, she shall take such action as will best aid to avoid collision.” CRYSTAL’s failures to adhere to these Rules aggravated the risk and were at least as significant as my crew’s, as demonstrated by the United States’ successful settlement against that ship’s financiers.

⁸ See, e.g., the 16 June 2017 Navigation Brief ORM slides. (Ref. (b), encl. 32 at 18.)

⁹ The image (from reference (b), encl. (34)) and my penmanship require transcription:

Well done managing multiple events today. Remain focused on safely operating our ship. Continue to push ahead on qualifications, there are many departing in the coming months. Ensure you are watching and getting our midshipmen guest involved—they are our people and we protect our people.

Supplemental Guidance: (1) Split plant / 20Kts until we get 4 hrs ahead of PIM.

That safety could not be taken for granted; it required planning. Just ten days earlier, the most-recent engineering exercise, MOB-E 1.3B, resulted in a fire in our engineering plant causing a loss of power throughout the ship. That incident compelled my effort to get four hours ahead of our Position of Intended Movement, to ensure that we had adequate time to conduct engineering exercises *safely*.

I also could not afford to abstain from or postpone Aviation or Engineering qualifications: these were mission-critical, both for safety and for us to independently execute operations without external oversight or support. A several-month-long patrol without those certifications would have introduced excessive risk both to our ship's mission and the theater mission. Likewise, cancellation or postponement of exercises jeopardized those certifications.

Against these risks, I weighed the navigational risks on the night of 16 June. I did not find the latter warranted ordering additional seniority to the watch team, for multiple reasons. First, *seniority* in itself is not a mitigator, and reference (e) does not recognize "additional seniority" as a risk-management tool. Second, my crew, as discussed above, was MOB-N certified, had passed our ISIC Navigation Check Ride, and had safely navigated throughout the Pacific Theater for almost all of 2017. Third, while additional *experience* or *supervision* can buffer operational risk, based on the conditions of this watch team, the environment, and traffic, I did not assess that additional experience or supervision would mitigate the foreseeable navigational risks. The supervisory watchstanders had demonstrated the ability to navigate in open-ocean and coastal waters as well as the ability to comply with my standing orders under these conditions.

Nevertheless, after accounting for the multiple layers of risk involved in our operations, I *did* implement a series of mitigation measures to maintain safety, both on the night of 16 June and for the remaining underway period. In addition to putting an OOD who had obtained my maximum trust on the 2200-0200 watch to transit out of Sagami-Wan, these measures included:

- *Manning*. I ordered full manning of all warfare coordinators and the tactical action officer while steaming in Condition III. These supervisory watchstanders were qualified in all aspects of navigation and surface warfare operations and understood Sound Shipboard Operating Principles and Procedures, and I had personally trained them to that standard while I was the executive officer, so they had my trust to provide an additional level of supervisory oversight and forceful backup.
- *Engineering Configuration*. To provide substantial power and maneuvering capability, I ordered split-plant configuration rather than a more fuel-efficient option that limits thrust and turning radius ratios. This capability allowed for more options to avoid a collision.
- *Navigation Track*. As discussed above, the track maximized sea space by avoiding coastal areas with historically high contact density.
- *Four-section Standard Watch Rotation*. Accounting for the pace and scope of our upcoming operations, I ordered a four-section standard watch rotation to decrease levels of fatigue. A four-section standard watch rotation allows additional periods of rest, which I assessed was important as we balanced our training requirements while transiting and our operational commitments in the South China Sea.

- *Modified Zebra.* A standard material condition of readiness for ships at sea, but which I had the authority to change, I ordered Modified Zebra to provide increased readiness to combat progressive flooding.

4. **Unsupported Allegations.** Factual clarity exposes that the other allegations of deficient conduct before the 16-17 June transit are without evidentiary basis. Paragraph 3 of reference (a) echoes the language of the dismissed court-martial charges against me. Had that case proceeded to trial, my defense would have been thorough and complete. Because I have never had an opportunity to make the case that I acted reasonably under the circumstances, I make it here.

- a. I worked closely with my staff to generate a watchbill that properly used our talents and maximized rest. The allegation that I “failed to approve an adequate watch bill that managed the fatigue of [my] watchstanders” has never been supported by an alternative, better watchbill.

Approving a watchbill with qualified and experienced personnel was my first priority; fatigue management was a close second. As stated above, I directed a four-section watch rotation for controlling stations and warfare coordinators. This rotation, on average, allows for 14.2 hours “off” after one on-watch rotation. This frequency allows controlling watch sections sufficient time for rest and the preparation for watch, among the multitude of other assigned duties. Because the collision occurred the first night after an eight-day in-port period, we did not have the opportunity to achieve benefits from setting this routine.

As I reviewed each edition of the Condition III Underway Watchbill, I took into account who would have had the 2200-0200 watch for the initial transit south on 16 June. Using the Special Sea & Anchor Watchbill as my basis, the OOD, JOOD, and SUWC had no watch requirements until 2200. The TAO and CICWS were assigned Special Sea & Anchor watches, which secured at 1734—almost four-and-a-half hours before the 2200 watch. The CICWO and BMOW did stand continuous watches through small boat operations, but not because the watchbill was inadequate or mismanaged. Rather, it was because they were uniquely qualified in their respective positions. Moreover, the single-depth nature of their qualification was not due to mismanagement of the qualification process; it was a function of our manning deficiencies.

Our pace of operations on 16 June was arduous; this was the expectation a SEVENTH Fleet destroyer. To ensure my crew could execute the “Plan, Brief, Execute, Debrief” methodology, I ordered the crew to FITZGERALD at 0600. This allowed first-line leaders the opportunity look their sailors in the eyes to determine their readiness level. Every brief started on time, we got underway exactly on time at 1130, our precision anchorage was within feet of our target, and helicopter operations commenced exactly 37 minutes prior to sunset—timed to maximize both my training certification requirements *and* the added training requirement of the Helicopter Squadron. I say without reservation: 16 June was the best day that I had at sea during my then-eighteen years of service. I had no basis—fatigue or otherwise—to request an amended schedule and postpone our training certifications or delay or forego our National tasking in the South China Sea. Likewise, at the end of this day, I had no doubt that my watch team could safely navigate a straight-line transit through unrestricted waters.

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- b. The allegation that I “failed to revise standing orders or procedures to account for the operational circumstances and degraded equipment” is based on no instruction that would bind my judicious, practical discretion, nor does it account for my crew’s performance.

This allegation no doubt derives from RDML Fort’s criticism that no temporary standing order (TSO) addressed the condition of the SPS-67 Surface Search Radar Remote Control Station unit in the CIC, which was non-operational due to a missing pushbutton. (Ref. (b) at 70.)

As needed, FITZGERALD did regularly modify procedures based on equipment degradations, including through TSOs.¹⁰ But apart from those governing engineering departments,¹¹ no regulations establish mandatory standards for the issuance of a TSO. For the most part, the Navy leaves these matters to the discretion of commanders. Employing mine, I focused primarily on the impact a degradation had the operation of a warfare area.

Generally, the process for determining whether and how material degradations affect operational employment starts at the Current Ship’s Maintenance Project (CSMP). In June 2017, FITZGERALD’s CSMP contained over 2,100 material discrepancies. (Ref. (b), encl. (181).) It is neither reasonable nor useful to issue 2,100 temporary standing orders. Items on the CSMP are therefore refined in departmental reports, and are then included in operational briefs, with specific notation for impact on warfare area. As RDML Fort also noted, however, as we got underway on 16 June, the relevant department reports indicated that our navigation equipment was functional and that no material degradation impacted our ability to safely navigate.

In part, these reports were based on experience. For example, that SPS-67 Remote Station had been non-operational due to missing pushbuttons since 7 *December 2016*. (*Id.*) In this condition, FITZGERALD had been underway for nearly four continuous months, during which time watchstanders never reported it as adversely affecting their ability to safely navigate using the SPS-67 Radar. During the twelve hours I spent on the bridge on 16 June, I too did not observe that either the Remote Station or any other material degradations would impact our ability to safely navigate, nor did I receive any reports to that effect.

Moreover, contrary to assertions of complacency, my crew did not merely accept degraded equipment. We documented and implemented viable plans for corrective action. On the Remote Station, as of 12 June 2017, five of the six defective pushbuttons were received and in place; the remaining pushbutton had an estimated shipping date of 30 May 2017. (Ref. (b), encl. (186).) Ship’s force was also committed to properly coordinating with the Japan Regional Maintenance Facility to upgrade and take other appropriate action on degrading equipment. We had a planned and funded maintenance availability, where the following maintenance action was identified:

21824 CE03-ZBA0 | ASSESS SPS-67V3 RADAR ACCOMPLISH THE
AN/SPS-67(V)3 SURFACE SEARCH RADAR | ASSESSMENT IN

¹⁰ See, e.g., TSO 283, where I approved alternate methods of opening the main drainage in Auxiliary Machinery Room 1. (Ref. (b), encl. (115).)

¹¹ See, e.g., COMNAVSURFOR 3540.3A, Engineering Department Organization and Regulations Manual (EDORM), App’x D (11 Apr 08).

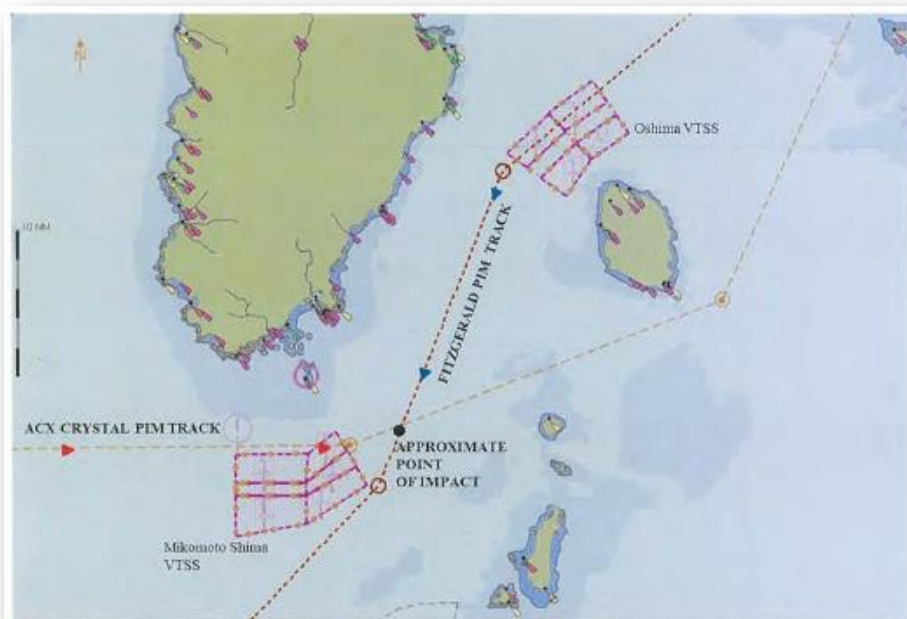
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ACCORDANCE WITH MRC N1Q4 AND MATERIAL CONDITION ASSESSMENT (MCA) NSW 67-5-5131. PROVIDE THE ISEA A COPY OF MCA WHEN COMPLETE. REPORT CONDITIONS FOUND TO SHIP'S CSMP.

(Ref. (b), encl. (181).) This availability, CMAV A7A1, originally scheduled for June 2017, was deferred for operational tasking. But that decision did not change any of the operational circumstances concerning navigational equipment in 2017. I therefore had no basis, under the reasonable rubric and criteria I employed in my thoughtful discretion, to issue a TSO modifying navigation procedures based on degraded equipment.

- c. The allegation that our navigation track was “poorly designed” derives from a mistaken representation of the track and is belied by its continued use in SEVENTH Fleet. Nor did the track direct transit “faster than safe speed in a heavily trafficked area,” as no order could override Rule 6.

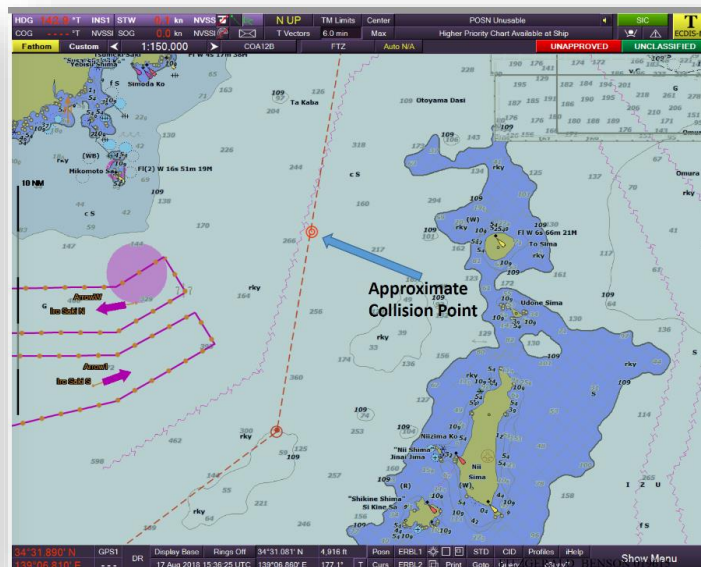
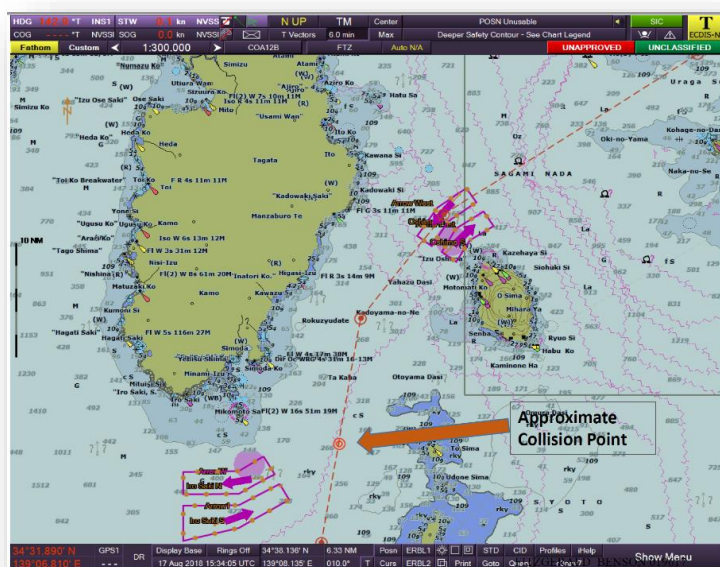
I discussed the purpose of the navigation track at length, above. It is true that RDML Fort was critical of the track for having “created multiple, challenging crossing situations at night by cutting across the eastern end of the Mikomoto Shima VTSS.” (Ref. (b) at 90.) But that criticism is based on an inaccurate depiction of the track. As his investigation has it, the track appears:



(Ref. (b) at 14.)

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Months later, the Surface Warfare Officers School (SWOS) analyzed FITZGERALD's position data and produced charts different from the one generated by RDML Fort's team:



As the SWOS charts demonstrate, our planned navigational track did *not* cut across the eastern end of the VTSS.¹² We were to transit several nautical miles to the east. Regardless, this is the same track many other FDNF ships operating from Yokosuka follow. And just as with the Condition III Watchbill, no authority has proposed what an alternative, *safer* track would have been. In truth, a track that attempted to avoid crossing situations by following the VTSS would have (a) directed us away from our engineering certification exercise location and (b) brought us head-on with CRYSTAL as she transited eastward through the westbound VTSS lane.¹³

Our speed was appropriate for the conditions, which, as discussed above, did not include a “heavily trafficked area.” And my Night Orders direction to maintain a 20kt Speed of Advance in order to get four hours ahead of our Position of Intended Movement set only an *average* speed over a dedicated time period. It was not, of course, a direction to maintain a minimum speed. The OOD had full authority—in fact an *obligation* under Rule 6 of reference (c), mandating safe speed—to adjust the speed for the prevailing conditions and the simultaneous obligation to call me if she felt our speed required adjustment.

5. My Performance as Commanding Officer. I take this opportunity to respond to the wholesale criticism of my 35-day tenure in command. Reference (a) asserts that, despite being “singularly responsible for assessing and balancing risk” while in command, I “abrogated [my]

¹² Notably, these charts were created on Voyage Management System software version 9.3. FITZGERALD was using version 7.7.1. (Ref. (b), encl. (171).)

¹³ CRYSTAL's disregard for the VTSS reflects its status as a *voluntary* scheme prepared by the Japan Captain's Association without International Maritime Organization approval. Our courts have long held that it does not give rise to an enforceable duty. *In re Complaint of Pacific Bulk Carriers, Inc. (The Atlantic Hope)*, 639 F.2d 72 (9th Cir. 1980).

responsibility to prepare [my] ship and crew for their assigned mission [and] fostered a command characterized by complacency, lack of procedural compliance, weak system knowledge, and a dangerous level of informality.” I respectfully disagree with that characterization of my performance. Rather, the evidence shows that—in port in Sasebo from 13-28 May, operating at sea from 28 May-6 June, and in port in Yokosuka from 6-16 June—I trained my crew to the maximum extent possible, and that our achievements warranted my confidence in our capability. And while I must accept my failure to foresee and mitigate our navigational risks, I submit that FITZGERALD symbolizes why the Navy does not assign risk management to one location.

- a. To continue to accomplish our mission despite manning, training certification, and maintenance shortfalls, I demanded the most from my crew, who were anything but complacent.

Rear Admiral Fort begins the report of his investigation by summarizing our ship’s circumstances:

At the time of the collision, FTZ was below Fit, Fill, and Navy Enlisted Classification (NEC) manning requirements, delinquent in both Tier 1 Mobility and Tier 2 Unit Tactical Warfare mission area certifications, and in need of a maintenance availability. Moreover, she was overconfident in her abilities given her operational tempo (OPTEMPO) as a Forward Deployed Naval Force (FDFN) Japan asset, but without having completed many of the aforementioned Surface Force Readiness Manual (SFRM) training and maintenance requirements. Following a seven-month Drydock Selected Restricted Availability (DSRA), FTZ got underway for contractor sea trials on 24-27 January 2017. FTZ sailed again on 17 February 2017 for what was planned as a few weeks at sea for training and participation in a multi-sail event. She did not return to port until four months later, on 6 June 2017, and only then due to a significant casualty to #3 Switchboard following a fire caused by crew error during engineering training. While on patrol for four months, FTZ was certified in only seven of 12 Tier 1 Mobility Mission areas (3M, Anti-Terrorism, Explosive Safety, Medical, Damage Control, Navigation, and Search and Rescue). FTZ was certified in zero of 10 Tier 2 Unit Tactical Warfare areas. After only 10 days back in her homeport, FTZ sailed again on 16 June 2017, without the benefit of a post-patrol maintenance availability, and then collided in the early morning hours of 17 June 2017.

(Ref. (b) at 11.) Aware of these circumstances from the day I took command in Sasebo, and likewise fully cognizant of the operational demands and challenges of FDFN-Japan command in 2017, I sought to institute a culture of commitment to readiness, resilience, and procedural compliance.¹⁴

- (1) Facing manning deficiencies, including critical gapped billets, and despite high turnover, FITZGERALD still accomplished many missions in 2017.

As RDML Fort noted, Manning Control Authority Fleet Directive 15-1 dictates manning targets for FDFN ships of: Fit 92%; Fill 95%. (Ref. (b) at 60, encl. (157).) But in June 2017, we were manned at: Fit 88%; Fill 93%. We had eleven critical Navy Enlisted Classification (NEC)

¹⁴ Careful review of the interviews contained in reference (b) reveals how completely my crew had ingested my command philosophy: Fighting, Integrity, Toughness, Zeal.

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Code deficiencies, and were gapped multiple billets, including Quartermaster Chief, which had been vacant *since March 2015*, despite express DESRON 15 requests to Commander, Naval Surface Forces. (Ref. (b) at 60-61, encls. (158), (159).)

When FITZGERALD left its seven-month drydock availability in January 2017—after experiencing approximately 40% personnel turnover in 2016—she was tasked immediately to conduct operations. She successfully completed a bi-lateral exercise with the Japanese Maritime Self Defense Force, South China Sea patrols, ballistic missile defense missions, dual carrier strike group formation exercises off of North Korea, and anti-submarine warfare missions.

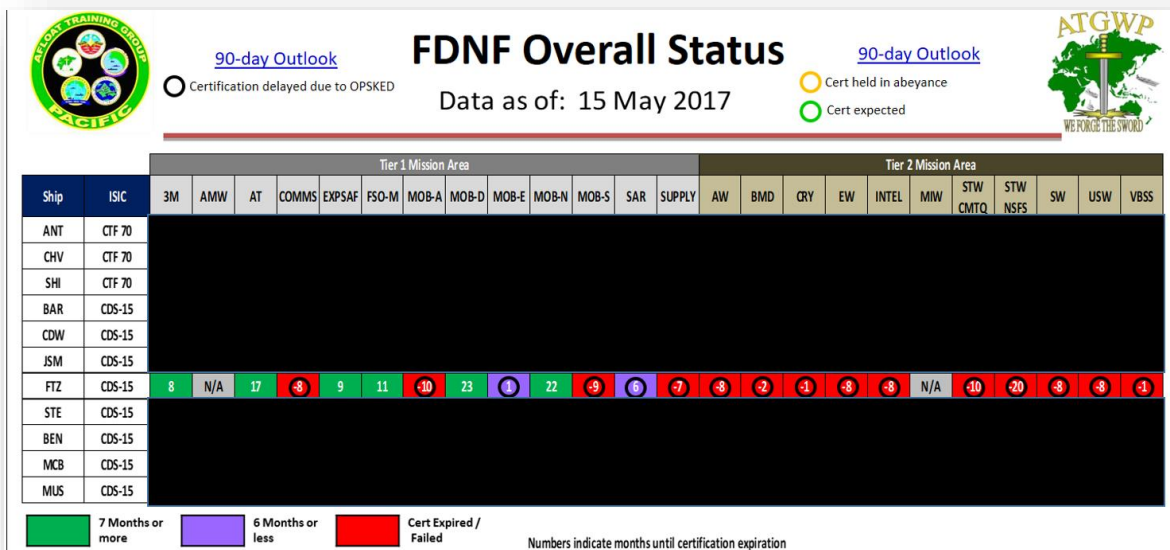
When I took command, I recognized that our manning situation was dire. Three days into my tenure, I personally cancelled two and denied another twelve leave chits—for Sailors who had been away from their homes and families for months and years, who would have to miss marriages, births, and deaths of loved ones. I took this action, and my Sailors understood it, not because of our complacency or informality, but because of our commitment to the mission.

(2) Although ship-level training and certification was routinely postponed due to operational tasking, we still maximized every training opportunity.

As reference (f), the applicable the Surface Force Readiness Manual, provides:

FDNF ships' high operational tempo (OPTEMPO) and frequent tasking in support of national objectives requires these ships always be prepared to execute complex operations. This demand for continuous readiness requires a policy that ensures FDNF ships do not lapse in training, readiness, material condition, or manning.

(Ref. (f) at 4-19.) But beyond the manning concerns above, the week that I assumed command of FITZGERALD, my training and certification reflected:



Certification of all delinquent Tier I and Tier II mission areas had been delayed due to operational tasking. No policy existed to prevent lapse in certification.

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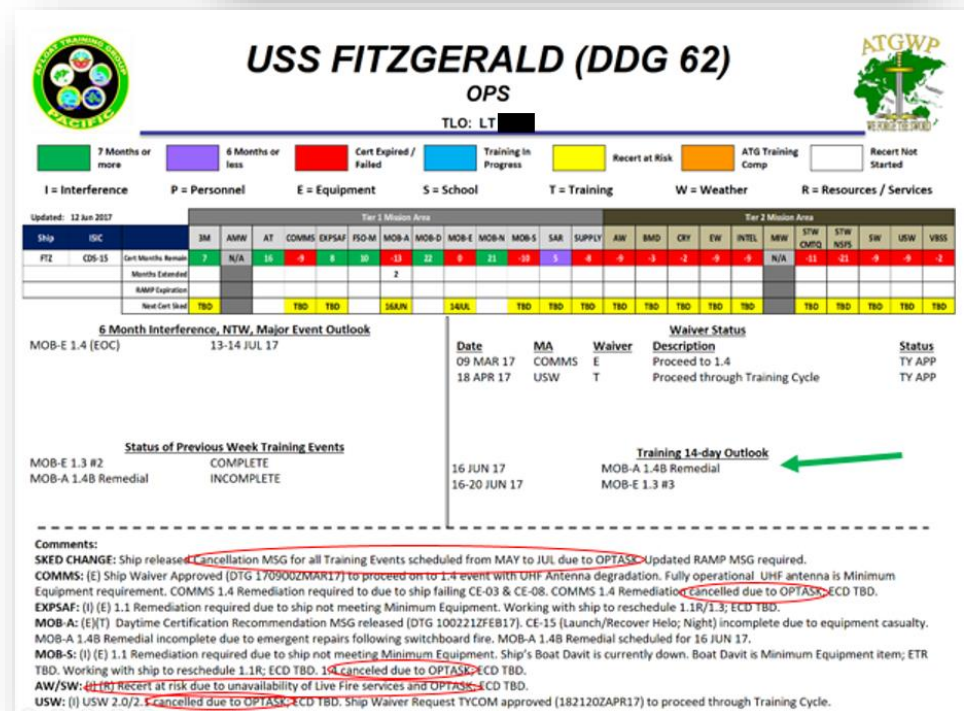
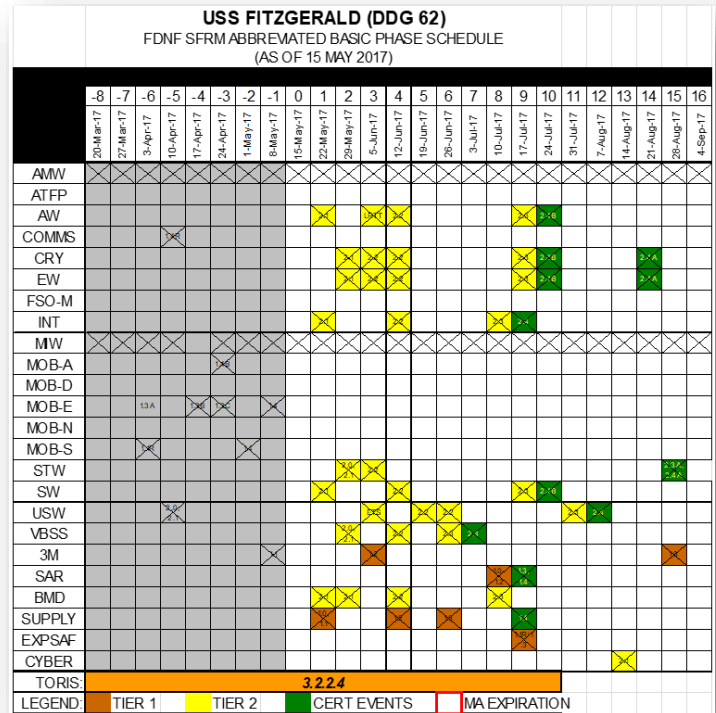
In addition, all of our training and certification exercises for the foreseeable future had been postponed for operational tasks, as depicted on the chart to the right.¹⁵

Nonetheless, once tasked, FITZGERALD made every effort to adhere to Sound Shipboard Operating Principles and Procedures. At the same time, I coordinated with ATGWP and DESRON 15 to maximize training and certification opportunities over the next month.

As the chart below depicts, by 16 June, we had completed MOB-A certification and were on our way toward MOB-E certification, despite the MOB-E 1.3B exercise fire casualty on 6 June 2017.

This was consistent with my experience on the ship: while I was Executive Officer, our commitment to training was evident, even in drydock. During that period, I ensured that FITZGERALD had more ship-only time in the bridge simulator than any other ship in Yokosuka. (Encl. (2) at 8-17.)

And while I was in command, my crew's performance was brilliant despite these training and certification conditions. Contrary to reference (a), I never abrogated my responsibility to prepare my ship and crew for our mission tasking. And I remain convinced that, given an opportunity to execute the training plan I



¹⁵ This was no anomaly. Other ships were, if not as extreme as our case, facing the same situation. (Encl. (2) at 1, 4, 7.)

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had developed with my department heads and departmental chief petty officers while I was executive officer, we would have been able to uncover and take action to correct the deficiencies that led to the collision.

- (3) With maintenance availability postponed and despite degraded maintenance capacity in Yokosuka, my crew cleared worked tirelessly while I was in command, enabling us to get underway.

As I discussed above, FITZGERALD had been “scheduled to support the Shimoda Black Ship Festival and execute a Continuous Maintenance Availability (CMAV).” (Ref. (b) at 18.) “But due to changes in her tasking she executed C7F operations and completed a two week voyage repair period in Sasebo.” (*Id.*)

I took command on 13 May, and during this period in Sasebo from 16 May to 25 May, we cleared *seventeen* CASREPs—on combat systems, electrical, engineering, communications, and navigation equipment—before “executing additional [Seventh Fleet] operations as well as RONALD REAGAN CSG operations.” (*Id.*) After the fire in our engineering plant on 6 June forced us to return to Yokosuka for the first time in four months, we then cleared another eight CASREPs by 15 June—on flight equipment, communications, navigation equipment, and the switchboard that caught fire.

It was this relentless drive that made us available for operational tasking. As the former DESRON 15 Commodore recognized, “In the case of getting FTZ underway on 16 June 2017 to swap FTZ for STE, there were no other [courses of action]; FTZ was the only ship available.” (*Id.*, encl. (23).)¹⁶ My crew made it so.

- b. The ship commander’s obligation to evaluate and manage risk does not and cannot mean he stands alone in that effort.


Indeed, I was responsible for evaluating FITZGERALD’s operational risks and mitigating them to the point of acceptability. Throughout this rebuttal, I have described the process by which I attempted to fulfill that responsibility. I did not accurately foresee the risk of my watch team’s breakdown in communications, teamwork, and situational awareness, and so manifestly I did not take sufficient action to manage that risk.

Still, in response to the sweeping condemnation of my “poor judgment and professional incompetence,” I humbly note: as Commanding Officer, my responsibility for risk-management was unique, but it was not *singular*. Per reference (d), all levels of the Navy are responsible for evaluating, communicating, and mitigating risk. And the Navy also demands that risk decisions be made “at the appropriate level,” which “is the person who can make decisions to eliminate or minimize the hazard, implement controls to reduce the risk, or accept the risk.” (Ref. (d), encl. (1), ¶ 5.d.)

¹⁶ My crew’s efforts could not resolve every issue. In addition to the items on the CSMP, we departed Yokosuka on 16 June with no fewer than sixteen outstanding CASREPs.


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This means at the unit level, commanders assess and mitigate unit-level risks, which do not include systemic matters like pervasive and persistent manning shortfalls, such as those that existed throughout FDNF-Japan in 2017:



CSG 5 FIT/FILL % (current)

July 17



Month: Current Month						
Group Name	BA (All)	BA (Fit)	ONBD	Fit %	Fill %	
RONALD REAGAN FDNF	8,056	7,482	7,389	88.71%	91.72%	
CARRIER STRIKE GROUP						
RONALD REAGAN FDNF						
Command	UIC	ONBD	Billets Fit	Fit Gaps	Fit %	Fill %
CARRIER AIR WING 5	N09733	38	31	9	77.50%	90.48%
CG 54 ANTIETAM	N21387	284	256	36	87.67%	89.59%
CG 62 CHANCELLORSVILLE	N21451	280	254	38	86.99%	88.33%
CG 67 SHILOH	N21657	284	254	37	87.29%	89.03%
COMCARSTRGRU 5	N09723	55	53	6	89.83%	93.22%
COMDESRON 15	N01246	27	26	8	76.47%	79.41%
CVN 76 RONALD REAGAN	N22178	2,737	2,462	278	89.85%	92.09%
DDG 52 BARRY	N21660	228	217	42	83.78%	83.52%
DDG 54 CURTIS WILBUR	N21640	242	225	34	86.87%	88.64%
DDG 56 JOHN S MCCAIN	N21686	243	228	41	84.76%	85.87%
DDG 62 FITZGERALD	N21824	252	233	36	86.62%	89.05%
DDG 63 STIETHEN	N21825	261	241	28	89.59%	92.23%
DDG 65 BENFOLD	N21940	249	228	31	88.03%	91.21%
DDG 85 MCCAMPBELL	N22993	258	237	29	89.10%	92.47%
DDG 89 MUSTIN	N22992	253	236	30	88.72%	90.68%
HSC 12 HELSEACOMBATRON	N09372	219	194	20	90.65%	94.81%
HSM 51 HELMARSTRKRON	N55884	215	144	9	93.64	101.21%
HSM 77 HELMARSTRKRON	N55150	209	186	15	92.54%	97.21%
VAQ 141 VAQRON	N53807	169	144	20	87.80%	92.86%
VAW 125 CARAEWRON	N09222	129	118	17	87.41%	87.74%
VFA 27 STRKFITRON	N65185	225	188	20	90.38%	102.74%
VFA 102 STRKFITRON	N09712	216	196	25	88.69%	92.70%
VFA 115 STRKFITRON	N09604	208	164	12	93.18%	101.46%
VFA 195 STRKFITRON	N09706	198	165	12	93.22%	96.12%

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Or matters like FDNF facilities that struggle to support maintenance requirements, such as the Navy Inspector General wrote about Fleet Activities Yokosuka Port Operations and Ship Maintenance in March 2017. (Encl. (3) at 5-7.) Or like the absence of an Optimized Fleet Response Plan with risk-mitigated readiness schedules for overseas-homeported ships, such as the one the Government Accountability Office called for in 2015 with U.S. Pacific Fleet concurrence. Or the employment priorities for surface forces, such as those Admiral Davidson criticized in his Comprehensive Review:

[T]he FDNF-J force generation model could not keep up with the rising operational demands for cruisers and destroyers in the Western Pacific. 2016 was the tipping point for the combined FDNF-J force generation, obligation and force employment demand. Rapidly rising operational demands and an increase in urgent[] or dynamic tasking led to an unpredictable schedule and inability to support training and certification There was an inability of higher headquarters to establish prioritization of competing operational demands.

(Comprehensive Review, ¶ 9.10.5.)

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I do not believe my actions and decisions in command were unreasonable—prudent commanders in the same or similar circumstances would make the same calls I did, facing the same chances for failure. This is because few if any unit-level commanders are in a position to accurately foresee, evaluate, and mitigate against the aggregated institutional risks imposed by a force generation model that keeps forward-deployed vessels undermanned, forecloses training for the sake of operations, and deprives ships of needed maintenance.

These conditions increase and compound operational risk borne by ship commanders and their crews. But at the unit level, accurately evaluating accumulated structural risks, and developing and implementing appropriately-calibrated measures to protect against organizational drift in those conditions, is almost impossible.

Instead, a commander reasonably sees his ship's success in those conditions as I did the FITZGERALD's outstanding performance in 2017: an indication not of overachievement, but rather of a crew that is committed to and routinely practicing at the Navy's highest standards.

6. Thank you for your consideration of these matters.



B. A. BENSON